

The Community Trade Mark in Comparison with the National Trade Mark – Focused on the Unitary Character of the Community Trade Mark and the Absolute Grounds of Refusal

Abstract

The Community Trade Mark system has existed since 1994 when the Community Trade Mark Regulation No. 40/94/EC was adopted. Even though the European system is younger than the national trade mark systems, one cannot say that it is a less successful system – particularly according to the number of registered Community Trademarks.

The regulation of trademarks is very complex and for this reason I have decided to focus only on one part of the regulation, namely the unitary character, which represents a special characteristic of a Community Trade Mark – and further on the absolute grounds of refusal and their comparison in European and Czech trade mark law. The two systems for the registration of trademarks show considerable resemblance; however, one shall find differences, e.g. an integration of bad faith as one of the absolute grounds of refusal appearing only in the national system. The purpose of my thesis is to compare the two systems of trademarks - the Community level and the National level, and to provide readers with clear guidance regarding the general rules applicable within the registration. I will do this through an analysis that relates ECJ decisions.

My thesis consists of four chapters. The first introductory chapter describes the history of trademarks and the development in their regulation, including the international conventions.

The second chapter inquires into the term “trade mark” and the trade mark’s functions. The function of the identification of the origin is especially important. If the sign fails to fulfil this requirement, it cannot be registered as a trade mark. Further this chapter describes principles of autonomy and coexistence which govern the relationships between national and European system.

The third chapter deals with one of the main topics of my thesis, i.e. the unitary character of the Community Trade Mark. I examine the controversial decision of the Benelux office concerning the requirement on territorial scope of use of the Community Trade Mark, and I have compared it with the conclusions of the Court of Justice of the EU (ECJ) in its decision C-301/07.

The last chapter contains an analysis of each absolute ground and relating ECJ decisions. Due to the similarity of European and national regulation, the analysis is based on

the Community Trade Mark system; nevertheless, the differences in the Czech system are pointed out. In the beginning of this chapter I discuss *inter alia* the area of non-traditional trademarks where the approach of the offices has not yet been totally unified. A part of this chapter focuses on the reasons which are included only in the Czech regulation.

Conclusions are drawn in the Summary. The outcome of this paper shows primarily that each sign is unique and therefore must be examined on an individual basis adhering to general rules mostly set by the ECJ within its trademarks jurisdiction. Application of the general rules in the case of Community Trademarks is further influenced by their unitary character, which obliges them to fulfil all of the requirements throughout the entire European Union.